

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, DC. 20202

In the Matter of

NEW HAMPSHIRE TECHNICAL COLLEGE,

Respondent.

Docket No. 96-11-SP

Student Financial
Assistance Proceeding

PCRN: 199530111763

Appearances:

Nancy J. Smith, Esq., Assistant Attorney General, State of New Hampshire, Concord, New Hampshire, for New Hampshire Technical College.

Jennifer L. Woodward, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Judge Ernest C. Canellos

DECISION

New Hampshire Technical College (College), Nashua, New Hampshire, is a public institution of higher education which offers degree and certificate programs of study in technical and business subjects. It is accredited by the New England Association of Schools and Colleges and is eligible to participate in the Federal Pell Grant, Campus-based and Federal Family Education Loan (FFEL) Programs, authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 et seq. and 42 U.S.C. § 2751 et seq.

On November 13, 1995, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) issued a final program review determination (FPRD) which found that the College violated several regulations promulgated pursuant to Title IV. The FPRD had its genesis in a June 19 - 23, 1995, on-site program review of the College's Title IV compliance for the award years 1992-1993 and 0993-1994. The program review report, dated June 30, 1995, contained four adverse findings. The FPRD concluded that the College had taken corrective action as to three of these findings leaving in issue only SFAP's conclusion that the College's Pre-Tech Program is not an eligible program and, as a result, the College improperly disbursed Federal funds to students enrolled in such program

It is abundantly clear that Title IV program funds are to be used solely for expenses connected with the cost of attendance in an eligible program. An eligible program at an institution of higher education is defined for Title IV purposes as, inter alia, a program which leads to a degree, is at least two years in length and acceptable for full credit towards a bachelor's degree, or is at least a one-year training program preparing a student for gainful employment. 34 C.F.R. § 668.8(c). The evidence in the record reveals that the Pre-Tech Program is a nine-month program which was established by the College to prepare students who wished to pursue a degree program, but lacked some of the skills needed for enrollment. The College's procedures provided that once a student successfully completed the Pre-Tech Program with at least a grade of C in each course, such student became eligible for admission to one of the degree programs. It seems clear that such a remedial program, regardless of how worthy, does not qualify as an eligible program.

The College raises three matters in its defense. First, it claims that a SFAP program reviewer at a prior on-site review advised the College that the Pre-Tech Program was an eligible program. Second, the students enrolled in the Pre-Tech

Program were simultaneously enrolled in one of the College's other eligible programs. Third, at least in so far as FFEL funds are concerned, the Pre-Tech Program students are clearly eligible to receive Title IV funding. [1](#)

SFAP, on the other hand, argues that even if the program reviewer had made the statements ascribed to him, such unofficial advice cannot bind the government. Also, SFAP argues that other than the College's belated claims in its brief, the evidence of record is clear -- Pre-Tech students were not enrolled in any other program at the College. SFAP does concede, however, that the Pre-Tech Program students are eligible for FFEL and Direct Loans in accordance with 20 U.S.C. § 0091, 34 C.F.R. § 668.7(a)(1)(ii). [2](#)

In an appeal of a finding in an FPRD, the institution has the burden of proving that the Title IV funds were lawfully disbursed. 34 C.F.R. § 668.116(d). I find that College failed to carry its burden of proof in showing that the Pre-Tech Program was an eligible program. The College asserts that as a result of being misled by a SFAP program reviewer during a previous program review at the College that the Pre-Tech Program was eligible, the College should be relieved of liability. I find, however, that this claim of "estoppel" is not meritorious for two distinct reasons. First, the obvious informal, unwritten nature of the supposed statement of the program reviewer would vitiate against the application of estoppel. Further, the defense of estoppel does not normally lie against the government. See *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Heckler v. Community Health Services*, 467 U.S. 64(1984); *Schweiker v. Hansen*, 450 U.S. 785 (1981); *In re Academia la Danza Artes Del Hogar*, Docket No. 90-31-SP, U.S. Dep't of Educ. (May 19, 1992), *Aff'd* (Certification of Decision by the Secretary) (Aug. 20, 1992). I find that the circumstances which might give rise to the defense of estoppel against the government are not present here. I find, further, that the College has failed to meet its burden of proving that Pre-Tech students were otherwise eligible because they were jointly enrolled in another eligible program. [3](#) Finally, since the parties no longer contest the issue, I find that the Pre-Tech students are eligible to receive FFEL and Direct Loans.

FINDINGS

1. New Hampshire Technical College's Pre-Tech Program is not an eligible program as envisioned in 34 C.F.R. § 668.8.
2. New Hampshire Technical College improperly disbursed Pell Grant payments to students who were enrolled in the Pre-Tech Program.
3. New Hampshire Technical College did not err by disbursing FFEL and Perkins Loans to Pre-Tech Program students.

ORDER

On the basis of the foregoing, it is hereby ORDERED that New Hampshire Technical College pay to the U.S. Department of Education the sum of \$41,595, broken down as follows: \$ 38,241 for improper Pell Grants, \$900 for improper SEOG, and \$2,454 for the federal share of improper FWS.

Ernest C. Canellos
Chief Judge

Dated: December 5, 1996

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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[1](#) The College requested an opportunity to present oral argument. Based upon my review of the file and the issues presented, the request is DENIED.

[2](#) Although there appears to be no articulable reason to treat students in the federal student financial assistance programs differently in so far as remedial programs are concerned, there is apparently no comparable provision for the other Title IV Programs.

[3](#) If the students had been enrolled in an eligible program simultaneously with the Pre- Tech Program, the remedial course work could have been eligible for Title IV funding under the provisions of 34 C.F.R. § 668.20.